

B. Matrin and Others Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Feb-15-2011

Judge : Huluvadi. G. Ramesh

Appeal No. : WRIT PETITION NOS. 11994-11998 OF 2010 C/W WRIT PETITION NOS. 36078-36113 OF 2009 & 35291-35308 OF 2009 (EXCISE)

Appellant : B. Matrin and Others

Respondent : State of Karnataka and Others

Advocate for Pet/Ap. : For the Petitioners: G.K. Bhat, Mohan Bhat, Advocates. For the Respondents: R1 to R3 - K.M. Shivayogiswamy, HCGP, R4 - K.M. Prakash, Advocate.

Judgement :

(Prayer: These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India Praying to strike down rule 3[1][C] of Karnataka Excise [Sale of Indian and Foreign Liquors] Rules 1968 as Amended by Notification Dt. 30.06.03, as per Ann-A so far as Petitioners are Concerned and Quash the Notification Dt. 3.7.09, produced at Ann-D, issued by the R1, in so far as Petitioners are Concerned.)

1. These set of Writ Petitions are filed seeking to strike down Rule 3(11) (c) of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 as amended by Notification dated 30.06.2003 and also to quash the notification issued on

3.7.2009 by the 1st respondent and also quash the license in Form No.CL-II (c) dated 25.03.2010 issued by the Deputy Commissioner in favour of Mysore Sales International Limited., and for such other orders.

2. Petitioners are said to be CL-2 and CL-9 license holders respectively granted under the provisions of Karnataka Excise (Sale of Indian and Foreign Liquors) Rules 1968 (hereinafter referred to as 'rules' for short) and the same was renewed from time to time. According to the petitioners, Rule 3(11) (c) of the said Rules makes provision for grant of retail license notwithstanding anything contained in Rule 12 of the said Rules in favour of State owned companies, which was published in the Karnataka Gazette (extraordinary) dated 30.06.2003 and the said Notification amends Rule 8 of the Rules making provision for retail shop license to Government companies charging only Rs. 1,00,000/- Subsequently, by order dated 3.9.2003 , the Government has taken a decision in the meeting of Council of Ministers to stop entertaining any application for grant of fresh license and by inserting Rule 5(A) to the Rules with effect from 24.6.2000, a provision was made to renew the licenses issued earlier thereby, only the existing licenses were continued by renewing. Thereafter, the Government by exercising its discretion under Section 71 of the Karnataka Excise Act, amended the Rules by inserting sub-rule 11 (c) to Rule 3 of the Rules which provides for granting retail license to Government companies and also amended Rule 8 of the Rules by fixing the license fee at Rs.1,00,000/- per year for retail shop license issued to the Government Companies. Though it was brought into force with effect from 1.7.2003, it was not enforced due to policy decision of the Government dated 3.9.2003 banning issue of fresh licenses. Thereafter, based on the census report and also due to the need for more licenses, the Chief Controlling Authority requested the State Government to relax the restriction and to provide more licenses and accordingly, the Government has taken a decision to grant 463 licenses in favour of Mysore Sales International Limited and accordingly, on the applications filed by the MSIL, although objections were filed and the consent of Grama Panchayath was not obtained, the Deputy Commissioner has favoured MSIL with licenses by charging only Rs.1,00,000/- for each shop as against the individual licensees who are charged between Rs.6,00,000/- to Rs.3,20,000/- for CL-9 license and Rs.4,46,000 to Rs.3,00,000/- for CL-2 licensees. Hence, these

writ petitions seeking to strike down Rule 3(11) (C) of the Rules and also the communication issued by the Government of the Excise Commissioner to issue licenses in favour of MSIL.

3. Heard.

4. According to the learned Counsel for the petitioners, Rule 8 of the Rules provides for charging only minimum license fee to the Government owned retail shops as against individual licensees who are charged exorbitantly, which is arbitrary and further according to him, by sub-rule 11 (c) of Rule 3 of the Rules, a provision is made to grant retail license in favour of State owned companies notwithstanding anything contained in Rule 12, whereas the same is prohibited in respect of CL-2 and CL-9 license holders.

5. The learned Counsel appearing for M/s. Mysore Sales International Limited has relied upon the decision of the Apex Court reported in AIR 1996 SC 911 in the case of M/s. Khoday Distilleries Ltd., etc., Vs. State of Karnataka and others to contend that, the validity of Rule 3 (11) (c) has already been upheld by the Apex Court wherein referring to Section 71 of the Karnataka Excise Act r/w Rule 3(11) of the Karnataka Excise (Sales of Indian and Foreign Liquors) Rules, 1968, the Apex Court has held that, a distributor license as contemplated under Rule 3 (11) is only a license to deal in purchase and sale of liquor. This activity is not something different from what is contemplated under the Act itself to in respect of which the rule-making authority has been delegated to the State under Section 71. Mere fact that a monopoly of distributor license is sought to be created does not take the license outside the ambit of the Act. The Act itself provides for issuance of number of licenses that could be regulated by the state. If the State chooses to regulate the licenses by providing that license shall be granted only to a company owned by the State, it cannot be said that such a license is something which is outside the purview of the Act to the rule making authority of the State under the Act.

6. In view of the above legal position and also, since it is settled in various other cases that sale of liquor is neither a fundamental right nor a question of arbitrariness which can be questioned, and also when the State intends to promote business through organized sectors namely, the companies owned by the

State, the granting of licenses to the MSIL cannot be held to be arbitrary and, the Rule enabling grant of some more licenses in the interest of Public health to general order and thereby, grant of some more CL-2 licenses through MSIL, cannot be held to be bad.

7. In so far as charging of license fee as per Rule 8 of the Rules is concerned, of course, in the case on hand, for CL-2 license it is charged at Rs.1 lakh for MSIL i.e., State owned company's license holders, whereas, for individual licensees it is being charged at Rs.7 lakhs and odd within the City Municipal Corporation. The procedure adopted by the State does not stand to reason as to why such a license fee has to be enhanced when both CL-2 private license holders as well as State owned companies are to run similar business and also when simultaneously, by a Rule, it has fixed the minimum margin profit of 10% from 20% which was fixed earlier. In the circumstances, it is for the State to reconsider the charging of license fee to various places as indicated in Rule 8 and it is for the petitioners to give representations to the Government so that the Government shall take decision to maintain uniformity in the matter. Since it is not that the private dealers would take over the public company business, as such, there is no rationale in fixing exorbitant fee in respect of private dealers. However, without quashing the rules framed in 2007, the Government shall consider the representations of the petitioners to maintain uniformity in the matter of charging license fee since it appears to be causing hardship to run the business and also to eke out their livelihood. Since from time to time, the license fee would be enhanced/revised, when the margin of profit has been reduced from 20% to 10% , such a revision must be proportionate to the business and the profit thereon.

8. Further grievance of the petitioners is, there is no provision for grant of fresh licenses under Rule 5 of the Rules as per the policy made by the State on 3.9.2003 in not granting any fresh licenses. But, subsequently, it has taken a decision to grant fresh CL-2 licenses to MSIL, the State owned company. However, once again the answer for this is, the decision of the Apex Court reported in AIR 1996 SC 911 referred to above and also the decision reported in AIR 1975 SC 360 in the case of Nashirwar Vs. State of Madhya Pradesh and others wherein the Apex Court has held that, the State has the exclusive right and

privilege of manufacturing and selling liquor. It can auction licenses for carrying on business of selling liquor and a citizen has no fundamental right to do business in liquor.

9. It is stated that one of the purpose of regulation is to raise revenue to the State by granting licenses to the State owned companies and while exercising monopoly to privilege, the State felt it proper to give more number of licenses to the State owned company to regulate business in liquor. Although a policy was brought in during 2003 to restrict issuance of CL2 and CL9 licenses, however, it shall not bar the issuance of licenses in favour of the State owned companies and the business carried on by the State is to earn revenue for the State as limited revenue would be generated in case of private CL2 or CL9 license holders since the margin profit is fixed. For the purpose of generating revenue, when the State has taken a decision to give more number of CL-2 licenses to the State owned companies, that cannot be said either discriminatory or arbitrary and no quota could be fixed for issuance of licenses to the Government owned companies by the Commissioner of Excise and it applies only to private individuals.

10. However, in so far as charging more license fee to the individual dealers as compared to Government owned companies is concerned, although prohibition on sale of arrack would have enhanced the business of India made foreign liquor, but the fact remains that an exorbitant fee is being charged by revising the fee of private dealers to that of Government owned companies, which works out hardship to the private dealers. Hence, without quashing Rule 8 of the Rules, the Government is hereby directed to consider the representation of these petitioners who are CL-2 and CL-9 license holders and to take decision to maintain uniformity in the matter of charging license fee between the private owners and the Government owned companies and the said revision shall be made before the commencement of the Excise year.

Accordingly, petitions are disposed of.

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